

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

CRL.A.No. 300 of 2000()

S.T.NO.1738/1991 OF JUDICIAL MAGISTRATE OF THE FIRST CLASS, ETTUMANOOR
CRA.36/1995 of SESSIONS COURT, KOTTAYAM
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APPELLANT:

THE MANAGER, E.S.I. CORPORATION, LOCAL OFFICE,
ETTUMANOOR.

BY ADV. SRI.T.P.M.IBRAHIM KHAN, SC, RAILWAYS

RESPONDENTS:

1. MATHEW SYRIAC, S/O.SYRIAC, IKKARA HOUSE,
PULIYANNOOR, PALAI (ZODIAC MATCH INDUSTRIES,
KIDANGOOR, KOTTAYAM)
2. STATE OF KERALA

BY ADV. SRI.MATHEW JOHN (K)

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD
ON 13/08/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

K.R.UDAYABHANU, J.

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Crl.A.No.300 of 2000-C
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Dated this the 13th day of August, 2007

J U D G M E N T

The appellant is the Manager of the E.S.I Corporation, Ettumanoor, who had initiated proceedings against the first respondent under Section 85(g) of the E.S.I.Act, on the allegation that accused being the principal employer of the Zodiac Match Industries, Kidangoor, failed to submit the records maintained by him before the Insurance Inspector for verification on 01/02/1992 and that despite the show cause notice issued, dated 28/05/1991, no response was received.

2. The evidence adduced in the matter consisted of the testimony of PWs.1 to 3 and Exts.P1 and P2, complaint and copy of show cause notice respectively. The accused got examined as DW.1. He has also produced Exts.D1 to D3. Ext.D3 is the photostat copy of the judgment of the proceedings initiated with respect to the same inspection for the offence under Section

85(a) and (e) of the E.S.I.Act for non remittal of contributions and non filing of returns. The above case was dismissed and accused acquitted and no appeal has been filed. The appellate court has held that Ext.D3 operated as issue estoppel and, hence, the prosecution case cannot be sustained. As it is pointed by the counsel for the respondent no objective evidence was adduced to counter the plea of the accused that he was not the owner of the establishment on the date of the inspection and that he acquired ownership subsequent to the date of the inspection. In the circumstances, and in the light of the findings of the lower appellate court, I find that the appeal is only to be dismissed. The criminal appeal is, therefore, dismissed.

K.R.UDAYABHANU,
Judge

ms

Crl.A.No.300/2000

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K.R.UDAYABHANU, J.

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Crl.A.No.300 of 2000 (C)
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J U D G M E N T

13th August, 2007